

¹
Kaur v. Mueller et al.
Petition for Hearing on Naturalization Application

1. Plaintiff, JASWINDER KAUR, is a lawful permanent resident of the United States residing within the jurisdiction of this Court. Plaintiff's claim for relief arises under 8

INTRODUCTION

Plaintiff, through undersigned counsel, alleges as follows:

JASWINDER KAUR Plaintiff,
V.
ROBERT MUELLER III, Director, Federal Bureau of Investigation,
MICHAEL CHERTOFF, Secretary, Department of Homeland Security,
EMILIO GONZALES, Director, U.S. Citizenship and Immigration Services (USCIS)
DAVID STILL, District Director, USCIS
Doe I, Bakersfield Field Office Director, USCIS
USCIS

USCIS No.: A 46 809 134
IMMIGRATION CASE
PETITION FOR A HEARING IN ON
NATURALIZATION APPLICATION
Civil Action No.: **C 02 4993**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMC

e-filing

MADAN AHLWALIA, Esq. (SBN # 175664)
AHLWALIA LAW PROFESSIONAL CORPORATION
1301 Shoreway Road, Suite 180
Belmont, CA. 94002
Office: (650) 591-1216
Facsimile: (650) 649-1893
Attorneys for Plaintiff
JASWINDER KAUR

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 U.S.C. § 1427.

2 Defendant Robert S. Mueller III is the Director of the Federal Bureau of
3 Investigations ("FBI"), an agency of the United States government and is sued here in his official
4 capacity. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
5 and is sued here in his official capacity. Emilio Gonzales is the director of USCIS and is sued
6 here in his official capacity. Defendant Doe 1 is the Field Office Director for the Bakersfield
7 USCIS Office and is sued here in his official capacity. His or her exact name is unknown to the
8 Plaintiff. David Still is the District Director of San Francisco USCIS district and is sued here in
9 his official capacity. Plaintiff alleges that defendants each have a role in the adjudication of the
10 applications for naturalization

11 3. This Court has jurisdiction of the action pursuant to 28 U.S.C. §§§1331, 1361,
12 1651 and 5 U.S.C. §701 et seq. Relief is requested pursuant to the aforementioned statutes and
13 under 28 U.S.C. §2201.

14 4. This action is brought to redress the deprivation of rights, privileges and

15 immunities secured to plaintiff to compel Defendants to perform a duty Defendants owe to
16 Plaintiff. This action is brought to compel Defendants and those acting under them to take action
17 on a Form N-400, Application for Naturalization, (hereafter "the Application") in order for
18 Plaintiff to become a Naturalized Citizen of the United States. The N-400 Application was filed on
19 or about June 21, 2005 with the USCIS California Service Center ("CSC") in Laguna Niguel,
20 California. (See Exhibit 1, I-797 Receipt Date.) Plaintiff was asked to appear for fingerprinting on
21 July 22, 2005. The plaintiff appeared for such fingerprinting and fingerprints were taken. (See
22 Exhibit 2, I-797, Notice of Action with stamp/notation from the US CIS). Subsequently, Plaintiff
23 was interviewed by an Immigration Officer, C. Chang, at the USCIS Bakersfield Office on

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1 November 14, 2005, and did not pass the English language and history and government tests. (See
2 Exhibit 3, Form N-652, Naturalization Interview Results). Plaintiff appeared again for another
3 interview on February 2, 2006 and was interviewed by Immigration Officer G. Hernandez. She was
4 verbally advised that she has passed the English language and history and government tests and
5 that "her husband's death certificate is needed to complete the adjudication". She was given Form
6 N-14. (See Exhibit 4). The death certificate of husband has no bearing on eligibility or otherwise
7 has no relationship to Naturalization application. However, on February 20, 2006, she provided
8 such death certificate to the US CIS. (See Exhibit 5, a copy of cover letter to the US CIS from the
9 Plaintiff). After over one and half years since the interview, plaintiff still awaits the decision. She
10 has made several other attempts including but not limited to, (1) writing to US CIS to inquire
11 herself (See Exhibit 6, a letter dated June 4, 2006- four months after the interview), seeking help
12 from Congressman's office (See Exhibit 7 and 7a, letters from Congressperson Dennis Cardoza
13 dated August 8, 2006 and November 21, 2006) and personal inquiry (by her son) on September 17,
14 2007. Certainly more than 120 days have passed since the interview in this matter, thus vesting
15 jurisdiction with this court under 8 U.S.C. § 1447.

18 3. Plaintiff is eligible to have her Application adjudicated and approved. There are
19 no grounds for ineligibility.

21 4. Defendants, the Department of Homeland Security and U.S. Citizenship and
22 Immigration Services (USCIS), are charged by law with the statutory obligation to adjudicate
23 this Application.

24 5. Venue is proper under 28 USC §1391(e) because the Plaintiff resides in this
25 district and no real property is involved in this action. Plaintiff resides in Modesto, CA now and
26 US CIS is informed of such new address. The application for Naturalization is also filed and

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17. Defendants' refusal to act in this case is as a matter of law, arbitrary and not in

CLAIMS

that plaintiff's application is still pending for the completion of all necessary background checks.

12. Plaintiff has inquired about the status of her case and the Service has indicated

date of the interview.

years have elapsed since plaintiff was fingerprinted and over two years have passed since the

11. Defendants have taken no action on plaintiff's case despite the fact numerous

plaintiff's application remains pending.

10. To date, plaintiff's FBI criminal record/name check has not been completed and

check. No other reason for delay has been cited.

advised that her application has not been adjudicated pending an FBI criminal record/name

independently qualified. (See Ex. 4, Form N-14). She has made several inquiries and has been

Application since she did not derive her lawful resident status from her husband and is

present her husband's death certificate- a document with no bearing on Naturalization

successfully passed the English language and history and government tests but was advised to

USCIS Office on February 2, 2006 in connection with his application for naturalization. Plaintiff

9. Plaintiff was interviewed (second time) by Immigration Officer at the Bakersfield

with the California Service Center. (See Ex. 1)

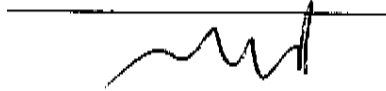
7. On June 21, 2005, Plaintiff filed her Form N-400, Application for Naturalization,

FACTS

the file to another office.

pending with Bakersfield USCIS. Subsequent to change in address, US CIS has not transferred

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Respectfully submitted this 26th day of September, 2007.

Equal Access to Justice Act.

(c) Grant reasonable Attorney's fees and costs of Court to Plaintiff under the

circumstances; and

(b) Grant such other and further relief as this Court deems proper under the

adjudication and approval of the Naturalization Application; and

(b) Or, in the alternative, remand the matter to US CIS for immediate

(a) Adjudicates the Naturalization Application in the court and by the court.

20. WHEREFORE, Plaintiff prays that the Court:

functions delegated to them by law and regulation.

naturalization application and have failed to carry out the adjudicative and administrative

seq., are unlawfully withholding and/or unreasonably delaying action on plaintiff's

21. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. §701et

the only agency which has the legal authority to grant citizenship.

20. Plaintiff does not have an alternative, fully adequate remedy available. USCIS is

19. Plaintiff has a clear right of the relief requested. She is fully eligible.

Defendants to act in accordance with their duties under the law.

18. Plaintiff has been, and continues to be greatly damaged by the failure of

the intentions to file the Petition with the District Court and they even failed to respond.

to adjudicate the application numerous times. The Plaintiff's attorney has even informed them of

accordance with the law. It definitely is no "within rule of reasons". Defendants have been asked

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MADAN AHLUWALIA
Attorney for Plaintiff

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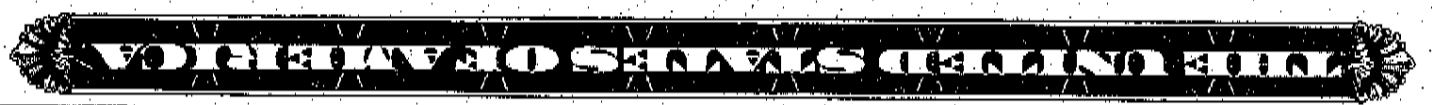
1. Form I-797 indicating CSC receipt date of N-400, June 21, 2005.
2. Form I-797 from US CIS scheduling Plaintiff for the fingerprinting and fingerprinting completion on September 6, 2005.
3. Form N-652, Naturalization Interview, for first interview.
4. Form N-14, issued by US CIS after interview date of 2/2/2006 asking for husband's death certificate.
5. Plaintiff's cover letter submitted along with death certificate on 2/20/2006.
6. Plaintiff inquiry letter dated 6/4/2006.
7. a. Letter from Congressman dated 8/8/2006 indicating that the case is pending because of FBI name check. b. Letter from Congressman dated 11/21/2006 indicating that the case is pending because of FBI name check.
8. In-person inquiry letter for 9/17/2007.

EXHIBITS

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Form I-797 indicating CSC receipt date of N-400, June 21, 2005.

Exhibit 1



| | |
|---|-------------------------------------|
| Receipt with Exception | |
| CASE TYPE | N400 Application For Naturalization |
| APPLICATION NUMBER | WSC*001338026 |
| APPLICANT NAME AND MAILING ADDRESS | |
| JASWINDER KAUR 3014 ESPERENZA DR BAKERSFIELD CA 93313 | |
| PRIORITY DATE | June 21, 2005 |
| PAGE | 1 of 1 |
| NOTICE DATE | June 29, 2005 |

PAYMENT INFORMATION:

| | |
|-------------------------|----------|
| Single Application Fee: | \$390.00 |
| Total Amount Received: | \$390.00 |
| Total Balance Due: | \$0.00 |

|||||||

The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):

Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.

Our records indicate your personal information is as follows:

Date of Birth: February 02, 1938
Address Where You Live: 3014 ESPERENZA DR
BAKERSFIELD CA 93313

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.
You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 365 days of this notice.

IMPORTANT NOTICE:

All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-238), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.
If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCS) at 1-800-375-5283. If you are hearing impaired, please call the NCS TDD at 1-800-767-1833.
If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE
CALIFORNIA SERVICE CENTER

P.O. BOX 10400
LAGUNA NIGUEL CA 92607-

APPLICANT COPY

INS Customer Service Number:
(800) 375-5283



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Form I-797 from US CIS scheduling Plaintiff for the fingerprinting and fingerprinting completion on September 6, 2005.

Exhibit 2



| | | | |
|-------------------------------------|--|---------------|---------------|
| Fingerprint Notification | | July 05, 2005 | NOTICE DATE |
| N400 Application For Naturalization | | INS AP | A 046 809 134 |
| APPLICATION NUMBER WSC*001338026 | | PRIORITY DATE | June 21, 2005 |
| APPLICANT NAME AND MAILING ADDRESS | | PAGE | 1 of 1 |

JASWINDER KAUR
3014 ESPERENZA DR
BAKERSFIELD CA 93313



11111111111111111111

To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER
INS BAKERSFIELD
4701 PLANZ RD
SUITE A12
BAKERSFIELD CA 93309

DATE AND TIME OF APPOINTMENT
07/22/2005
02:00 PM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. THIS APPOINTMENT NOTICE and
2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

BIOMETRICS PROCESSING STAMP
ASCS 80008

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

UPON RECEIPT OF YOUR REQUEST, YOU WILL DO SO TO THE EXTENT POSSIBLE. PLEASE MAIL YOUR REQUEST TO:

INS BAKERSFIELD
4701 PLANZ RD
SUITE A12
BAKERSFIELD CA 93309

FINGERPRINTS TO BE REVIEWED BY: 9/16/07 ON 15827/

APPLICANT COPY



If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICATION NUMBER WSC*001338026

WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

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Form N-652, Naturalization Interview, for first interview.

Exhibit 3

A#: 46809134

On 11/14/2005, you were interviewed by USCIS officer

C. Chang

- ☐ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☒ You will be given another opportunity to be tested on your ability to write English.
- ☒ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☒ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your English ability/ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

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Exhibit 4
Form N-14, issued by US CIS after interview date of 2/2/2006 asking for husband's
death certificate.

U.S. DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

1177 Fulton Mall
Fresno, CA 93721



JASWINDER KAUR

A File No.: A 46 809 134

DOB: 2-2-38

Examination of your application (N400) shows that additional information, documents or forms are needed before your application can be acted upon. Please **RETURN THIS LETTER WITH REQUESTED INFORMATION and/or DOCUMENTS BY: March 2, 2006**

Failure to do so may result in the denial of your application.

() Submit Original / Certified Copies of the final court dispositions for:

Arrest date(s)

City:

Case No(s):

() Proof of Child Support: Balance and payment history for:

(This may be obtained from the Family Support Division of the District Attorney's Office in the county where you reside.)

() Submit Form N-648, Medical Certificate, completed and signed by a licensed medical doctor or a clinical psychologist. The form must explain the nexus: how your disability prevents you from learning simple English or from memorizing the history and government questions in your own language.

(XX) Additional documents or information:

() DMV Form H-6;

() Photographs;

(XX) COPY OF HUSBAND'S DEED CERTIFICATE.

Other:

The following information is provided for your records. There is nothing further that you need to submit to the Service concerning your case.

() Your application is continued for:

() Receipt of your permanent immigration file.

() Re-Examination on:

() Knowledge of History and Government of the United States.

() Demonstration of ability to Speak/Read/Write English.

() You have failed to pass your re-examination.

*A certified copy of the officially registered Certificate of Registry of Marriage may be obtained, for the applicable fee, from the Local Registrar of Marriages (County Recorder of the County where the license was issued).

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Plaintiff's cover letter submitted along with death certificate on 2/20/2006.

Exhibit 5

799 Red field
modesto ca
95357
Cordoba
Dennis
209-529-1914

Jaswinder Kaur

Yours Sincerely,

Thank you.

Please find my husband's death certificate attached to this letter with English translation. On April 7th, 1999 me and my husband we both got visa to come to the United States at the same time. After that on April 25th, 1999 my husband died in a heart attack before coming to the United States. My visa was already processed and it was never changed from married to widow at the time of my entry into the United States. Please feel free to contact me at the above address if you need any further information.

Dear Officer,

Subject: Husband's Death Certificate and Explanation.

U.S. Department of Homeland Security
Citizenship and Immigration Service
1177 Fulton Mall
Fresno Ca 93721
ATTN: Officer G. Hernandez

Jaswinder Kaur
3014 Espereza dr
Bakersfield Ca 93313
661-832-2887

A# 46809134
D.O.B. 2-2-1938

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Plaintiff inquiry letter dated 6/4/2006.

Exhibit 6

Jaswinder Kaur

Yours Sincerely

Thank you.

I was interviewed on February 2, 2006. All the documents requested were mailed and received in your office on February 22 by the certified mail. Could you please be kind enough to let me know the status of my application? Also feel free to contact me at the above address if you need any further information.

Dear Officer,

Attention: Officer G. Hernandez

Subject: Application Status

U.S. Department Of Homeland Security
Citizenship and Immigration Service
1177 Fulton Mall
Fresno, CA 93721

Application # WSC*0013338026
A# 046 809 134
D.O.B 2-2-1938

Jaswinder Kaur
3014 Esperanza Dr.
Bakersfield, CA 93313

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a. Letter from Congressman dated 8/8/2006 indicating that the case is pending because
of FBI name check. b. Letter from Congressman dated 11/21/2006 indicating that the
case is pending because of FBI name check.

Exhibit 7

DAC/Imm

DENNIS CARDOZA
Member of Congress



Sincerely,

I appreciate the opportunity to be of assistance to you

I have been notified by the Citizenship and Immigration Service that the FBI name check is still pending for your file. You will receive further processing information directly from the CIS.

Dear Ms. Kaur:

Ms. Jaswinder Kaur
729 Redfield Avenue
Modesto, CA 95357

August 8, 2006

DENNIS A. CARDOZA
18th DISTRICT, CALIFORNIA
COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
DEPARTMENT OPERATIONS,
OVERSIGHT, NUTRITION AND FODDER
SUBCOMMITTEE ON
LIVESTOCK AND HORTICULTURE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON
FORESTS AND FOREST HEALTH
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL TERRORISM AND
NONPROLIFERATION
SUBCOMMITTEE ON THE MIDDLE EAST AND CENTRAL ASIA

Congress of the United States
House of Representatives
Washington, DC 20515-0518

WASHINGTON OFFICE:
435 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6131
DISTRICT OFFICES:
2223 M STREET, SUITE 305
MENLO PARK, CA 94028
(650) 393-4466
1321 I STREET, SUITE 1
MODesto, CA 95354
(209) 527-1814
137 EAST WEBER AVENUE
STOCKTON, CA 95202
(209) 946-0361

DAC/mm

DENNIS CARDOZA
Member of Congress



Sincerely,

I trust this information is helpful to you.

Thank you for contacting me regarding the difficulties you have been experiencing with the Citizenship and Immigration Service and your naturalization application. After numerous inquiries with the CIS, I have been informed that your FBI name check is still pending. Once the security checks clear, you will receive further processing information directly from CIS.

Dear Ms. Kaur:

Ms. Jaswinder Kaur
729 Redfield Avenue
Modesto, CA 95357

Congress of the United States
House of Representatives
Washington, DC 20515-0518

DENNIS A. CARDOZA
18TH DISTRICT, CALIFORNIA
COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
DEPARTMENT OPERATIONS,
OVERSIGHT, NUTRITION AND FORESTRY
SUBCOMMITTEE ON
LIVESTOCK AND HORTICULTURE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON
FORESTS AND FOREST HEALTH
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL TERRORISM AND
NONPROLIFERATION
SUBCOMMITTEE ON THE MIDDLE EAST AND CENTRAL ASIA

WASHINGTON OFFICE:
435 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6131
DISTRICT OFFICES:
2222 M STREET, SUITE 305
MERCED, CA 95340
(209) 383-4455
1321 I STREET, SUITE 1
MODesto, CA 95354
(209) 527-1914
137 EAST WEBER AVENUE
STOCKTON, CA 95202
(209) 948-0361

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In-person inquiry letter for 9/17/2007.

Exhibit 8

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1

my son KULBIR BAWHA is
 AUTHORIZED TO TALK TO INS ON
 my BEHALF (Signed JASWINDER Kaur)

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- You must appear in person and bring photo identification along with this appointment letter.
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)
- In order that we may serve you more efficiently, we recommend that you bring all applicable immigration forms, letters, receipts and supporting documents. If translations are used, they should be certified. Please bring the original documents as well.

If you wish to cancel this appointment, you will need the following Personal Identification Number: 49036



This is your Confirmation Number:

Name: Jaswinder Kaur
 Appointment Type: Speak to immigration officer
 Confirmation No.: FRE-07-9673
 Appointment Date: [REDACTED]
 Appointment Time: 8:50 AM
 Location: 1177 FULTON MALL, Fresno, CA 93721; LOBBY
 Authentication Code: 17353

INFOPASS
 Your e-Ticket to Immigration Information